

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JON FLEMING, individually,

11 Plaintiff,

12 v.

13 STATE OF WASHINGTON, DEPARTMENT  
14 OF CORRECTIONS; SGT. JOHN DOE  
15 TACKETT; CORRECTIONS OFFICER JOSE  
16 PORRES; CORRECTIONS OFFICER JOHN  
DOE VAN OGLE; LT. JOHN DOE  
HAYWARD; C. MAY; DOUGLAS  
WADDINGTON; and JOHN DOES 1 – 10,

17 Defendants.

Case No. C07-5246FDB

ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT ON ALL CLAIMS

18 Defendants move for summary judgment on all claims against the state and individuals named  
19 in their official capacity because the Eleventh Amendment bars suit against the State and its officers.  
20 The Washington State Supreme Court has consistently held that the State has not waived its  
21 immunity to suit under 42 U.S.C. § 1983. *See, e.g., Rains v. State*, 100 Wn.2d 660, 666  
22 (1983)(citing *Peters v. Lieuallen*, 693 F.2d 966, 970 (9<sup>th</sup> Cir. 1982). Also, “the eleventh amendment  
23 bars actions against state officers sued in their official capacities for past alleged misconduct  
24 involving a complainant’s federally protected rights, where the nature of the relief sought is  
25

1 retroactive, i.e., money damages, rather than prospective, e.g., an injunction.” *Bair v. Krug*, 853  
2 F.2d 672, 675 (9<sup>th</sup> Cir. 1988). Additionally, the State is not a “person” subject to suit under Section  
3 1983, *Will v. Michigan Dept. Of State Police*, 491 U.S. 58 (1989), nor are state officials acting in  
4 their official capacities “persons” for purposes of Section 1983. *Id.*

5 The statute of limitations for actions pursuant to Section 1983 in Washington is three years.  
6 *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758 (9<sup>th</sup> Cir. 1991). The incident and refraction in this  
7 case occurred on March 16, 2004, and Fleming was found guilty of the infraction after a hearing on  
8 April 27, 2004, and Fleming’s lawsuit was filed over three years from these occurrences.

9 Plaintiff responds conceding that the Eleventh Amendment precludes claims against the State  
10 in Federal court. Plaintiff also concedes that State officials cannot be sued in Federal court in their  
11 official capacities. Plaintiff argues, however, that the remaining claims against the individuals are not  
12 barred by the statute of limitations because Washington’s claim filing statute requires that in cases  
13 against the state and state officers, a plaintiff must file a claim prior to filing a lawsuit, RCW  
14 4.92.100. No lawsuit may be filed until 60 days have elapsed form the filing of the claim and the  
15 applicable statute of limitations is tolled during these 60 days. Thus, Plaintiff concludes that his case  
16 against the individuals is not barred by the applicable statute of limitations because of this tolling  
17 period.

18 Defendants reply arguing that complete summary judgment dismissing this case in its entirety  
19 is appropriate, given Plaintiff’s concessions and the fact that no tolling period applies in this case.

20 The general state law limitations period for personal injury claims applies to the federal civil  
21 rights laws, which lack statutes of limitations of their own. *Felder v. Casey*, 487 U.S. 131, 140  
22 (1988). The statute of limitations for actions brought under 42 U.S.C. § 1983 in Washington state is  
23 three years. *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758 (9<sup>th</sup> Cir. 1991).


24 The Court concludes that Plaintiff’s argument for a 60-day tolling period under certain claim  
25 filing statutes is unavailing. Prior to a legislative change in 2006, the Washington statute upon which

1 Plaintiff relies did not apply to lawsuits against individual employees. Thus under both RCW  
2 4.92.100 (tortious conduct of state, claims, presentment) and RCW 4.96.020 (tortious conduct of  
3 local government entities, claims, presentment), Plaintiff was not required to submit a claim prior to  
4 bringing a lawsuit against an individual who was a state or local government employee. *Wright v.*  
5 *Terrell*, 162 Wash.2d 192 (2007) concluded and reiterated that “former RCW 4.96.020 (2001) does  
6 not apply to claims against individual government employees.” In *Southwick v. Seattle Police*  
7 *Officer John Doe #s1-5*, \_\_\_\_ Wash. App. \_\_\_\_, 186 P.3d 1089 (2008), the Court concluded that  
8 RCW 4.96.020 has no application to claims under Section 1983 and the tolling provision of that  
9 statute cannot be separately applied to a Section 1983 action. *Id.* at 1093. The *Southwick* court  
10 cited *Silva v. Crain*, 169 F.3d 608 (9<sup>th</sup> Cir. 1999), which stated that special statutes of limitations  
11 associated with state notice claims generally have no applicability to Section 1983 actions and held  
12 that these statutes contained special statutes of limitations which apply in particular circumstances  
13 and no more tolled the general tort statute of limitations than other wholly separate statutes of  
14 limitations. *Southwick, Id.* There is no tolling of the general three-year statute of limitations  
15 applicable in this case.

16 ACCORDINGLY, IT IS ORDERED:

17 Defendants’ Motion for Partial Summary Judgment [Dkt. # 30] , converted to a Motion for  
18 full summary judgment in its reply [Dkt. # 35], is GRANTED and all claims in this case are  
19 DISMISSED with prejudice.

20 DATED this 11<sup>th</sup> day of September, 2008.

21  
22   
23 FRANKLIN D. BURGESS  
24 UNITED STATES DISTRICT JUDGE  
25  
26